

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAQUAN LOVE,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:22CV191

MEMORANDUM AND ORDER

This matter is before the court on preliminary review of Petitioner DaQuan Love's Petition for Writ of Habeas Corpus (filing 1) brought pursuant to 28 U.S.C. § 2254. The purpose of this review is to determine whether Petitioner's claims, when liberally construed, are potentially cognizable in federal court. Condensed and summarized for clarity, Petitioner's claims are:

Claim One: Petitioner was denied his rights under the Sixth Amendment to compulsory process and to confront his accusers because Petitioner was not provided information about an "unknown female" witness involved in the identification of Petitioner as a suspect.

Claim Two: Petitioner was denied his right to a fair trial and his rights to equal protection and due process under the Fourteenth Amendment because there was insufficient evidence to support his conviction as set forth in Ground 2, Attachment (B), and Ground 5, Attachment (E), of the petition.

Claim Three: Petitioner's right to due process under the Fifth and Fourteenth Amendments was violated because (1) the

factual basis supporting Petitioner's conviction contained false and uncorroborated information, (2) the trial court unreasonably denied Petitioner an evidentiary hearing, (3) Petitioner's conviction was obtained using an impermissibly suggestive identification, and (4) Petitioner was denied requested DNA testing.

Claim Four: Petitioner was denied his Sixth Amendment right to the effective assistance of counsel because counsel (1) failed to investigate the "unknown female" witness involved in the single-photo identification made by the victim and other potential witnesses against Petitioner, (2) failed to inform the state district court that information regarding the "unknown female" witness and illegal procedures employed by law enforcement in obtaining the identification was not available, (3) failed to contest the suggestive out-of-court identification of Petitioner, (4) failed to adequately investigate the evidence of multiple firearms potentially involved in the shooting, (5) improperly advised Petitioner to waive preliminary hearing, (6) filed an unreasonable direct appeal only raising the ground of excessive sentence and failed to follow up on further appeal procedures, and (7) failed to present Petitioner any information in opposition to the charges against him.

The court determines that these claims, when liberally construed, are potentially cognizable in federal court. However, the court cautions Petitioner that no determination has been made regarding the merits of these claims or any defenses to them or whether there are procedural bars that will prevent Petitioner from obtaining the relief sought.

IT IS THEREFORE ORDERED that:

1. Upon initial review of the habeas corpus petition (filing 1), the court preliminarily determines that Petitioner's claims, as they are set forth in this Memorandum and Order, are potentially cognizable in federal court.
2. By **September 9, 2022**, Respondent must file a motion for summary judgment or state court records in support of an answer. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **September 9, 2022**: deadline for Respondent to file state court records in support of answer or motion for summary judgment.
3. If Respondent elects to file a motion for summary judgment, the following procedures must be followed by Respondent and Petitioner:
 - A. The motion for summary judgment must be accompanied by a separate brief, submitted at the time the motion is filed.
 - B. The motion for summary judgment must be supported by any state court records that are necessary to support the motion. Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Motion for Summary Judgment."
 - C. Copies of the motion for summary judgment, the designation, including state court records, and Respondent's brief must be served on Petitioner *except* that Respondent is only required to provide Petitioner with a copy of the specific pages of the record that are cited in Respondent's motion and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the

court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.

- D. No later than 30 days following the filing of the motion for summary judgment, Petitioner must file and serve a brief in opposition to the motion for summary judgment. Petitioner may not submit other documents unless directed to do so by the court.
- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, he should inform the court by filing a notice stating that he will not file a reply brief and that the motion is therefore fully submitted for decision.
- F. If the motion for summary judgment is denied, Respondent must file an answer, a designation and a brief that complies with terms of this order. (*See* the following paragraph.) The documents must be filed no later than 30 days after the denial of the motion for summary judgment. **Respondent is warned that failure to file an answer, a designation and a brief in a timely fashion may result in the imposition of sanctions, including Petitioner's release.**

4. If Respondent elects to file an answer, the following procedures must be followed by Respondent and Petitioner:

- A. By **September 9, 2022**, Respondent must file all state court records that are relevant to the cognizable claims. *See, e.g., Rule 5(c)-(d) of the Rules Governing Section 2254 Cases in the United States District Courts.* Those records must be contained

in a separate filing entitled: "Designation of State Court Records in Support of Answer."

- B. No later than 30 days after the relevant state court records are filed, Respondent must file an answer. The answer must be accompanied by a separate brief, submitted at the time the answer is filed. Both the answer and the brief must address all matters germane to the case including, but not limited to, the merits of Petitioner's allegations that have survived initial review, and whether any claim is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition. *See, e.g., Rules 5(b) and 9 of the Rules Governing Section 2254 Cases in the United States District Courts.*
- C. Copies of the answer, the designation, and Respondent's brief must be served on Petitioner at the time they are filed with the court *except* that Respondent is only required to provide Petitioner with a copy of the specific pages of the designated record that are cited in Respondent's answer and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.
- D. No later than 30 days after Respondent's brief is filed, Petitioner must file and serve a brief in response. Petitioner must not submit any other documents unless directed to do so by the court.

- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, he should inform the court by filing a notice stating that he will not file a reply brief and that the merits of the petition are therefore fully submitted for decision.
 - F. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **October 11, 2022:** check for Respondent's answer and separate brief.
5. No discovery shall be undertaken without leave of the court. *See Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts.*

Dated this 26th day of July, 2022.

BY THE COURT:


Richard G. Kopf
Senior United States District Judge